IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8850 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNAGAR DISTRICT PANCHAYAT

Versus

LALJIBHAI MAGANBHAI PAYASIYA

Appearance:

MR HS MUNSHAW for Petitioner No. 1

MR CB UPADHYAYA for Respondent No. 1

MR IM PANDYA, AGP, for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 27/12/2004

ORAL JUDGEMENT

1. Against the concurrent findings by two Courts below and grant of interim relief directing the petitioner to make an arrangement to ensure that there is no damage to the crop in future, the petitioner has approached this Court with this petition under Articles 226 and 227 of the Constitution.

2. Learned Advocate, Mr. Munshaw, at the outset, prays that this petition may be treated as one under Article 227 of the Constitution.

3. Heard learned Advocate, Mr. Munshaw, for the petitioner. Reliance is placed only on statement of one Vashrambhai while drawing of Panchnama that the damage was caused by rain to the crop of respondent No.1 and not by the water from the check dam reservoir. However, barring this, there is no other materilal. It would be appropriate to note that the very Panchnama indicates that the crops in the nearby fields are in good condition and, therefore, no fault can be found in not accepting this Panchnama as rain could not have damaged the crop of only one field. Be that as it may, a public body who executes such public works is expected to make constructions in a manner as would not cause any damage to the properties of the people at large and this is all that is directed by the Courts below.

4. It was also indicated that future maintenance is to be looked after by the contributing group. The case of the plaintiff is not the damage because of non-maintenance or improper maintenance, but improper execution of the work and, as such, this contention regarding condition No.9 in Annexure-B cannot help the petitioner in any manner.

5. In above view of the matter, this Court is not inclined to exercise its powers under Article 227 of the Constitution. The petition is dismissed. Rule is discharged with no order as to costs.

[A. L. DAVE, J.]
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